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*Attorneys for Defendant Wells Fargo Bank, N.A.*

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

RICK ROBERTS THOMAS an individual,  
  
Plaintiff,

vs.

WACHOVIA MORTGAGE, FSB; WELLS  
FARGO BANK N.A.; NATIONAL  
DEFAULT SERVICING CORP.;  
MERSCORP, INC., a Virginia Corporation,  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC. a  
subsidiary of MERSCORP, Inc., a  
Delaware corporations; AND DOES I  
individuals 1 to 100, Inclusive; and all other  
persons and entities unknown claiming any  
right, title, estate, lien or interest in the real  
property described in the Complaint  
adverse to Plaintiff's ownership, or any  
cloud upon Plaintiff's title thereto,

Defendants.

CASE NO. 2:10-cv-01819

**DEFENDANT WELLS FARGO BANK,  
N.A.'S MOTION TO STRIKE PLAINTIFF'S  
PROPOSED ORDER GRANTING  
PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION and  
PLAINTIFF'S NOTICE OF NON-  
OPPOSITION TO MOTION FOR  
PRELIMINARY INJUNCTION PURSUANT  
TO LOCAL RULE 7-2(b), (d)**

Defendant Wells Fargo Bank, N.A., also named as Wachovia Mortgage, FSB ("Wells Fargo") by and through its counsel, the law firm of Snell & Wilmer L.L.P., hereby moves the Court to Strike Plaintiff's Proposed Order Granting Plaintiff's Motion for Preliminary Injunction and Plaintiff's Notice of Non-Opposition to Motion for Preliminary Injunction Pursuant to Local Rule 7-2(b), (d) (together "Plaintiff's Proposed Order and Notice of Non-Opposition").

Wells Fargo's Motion to Strike is based on the Memorandum of Points and Authorities herein, Plaintiff's Proposed Order and all other documents or papers filed in this action.

Dated: November 24, 2010.

SNELL & WILMER L.L.P.

By: /s/ Justin R. Cochran  
Cynthia L. Alexander, Esq.  
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*Attorneys for Defendant Wells Fargo Bank, N.A.*

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I.** **INTRODUCTION**

This case is based upon Plaintiff's Complaint that alleges wrongdoing associated with a loan entered into by Plaintiff used to re-finance real property. The Complaint includes Wells Fargo as a Defendant to all causes of action asserted.

In response to the Complaint, Wells Fargo filed a Partial Motion to Dismiss Plaintiff's Complaint. [Docket No. 4]. Thereafter, Plaintiff filed a Motion to Remand and a Motion to Stay Proceedings Pending Determination on Motion to Remand. [Docket No. 7, 8]. Wells Fargo opposed both Motions. [Docket No. 11, 13]. Additionally, Plaintiff filed an Opposition to Defendant's Motion to Dismiss, [Docket No. 12], and Wells Fargo filed its Reply in Support of Its Motion to Dismiss. [Docket No. 15]. Plaintiff then submitted a Proposed Order Granting Plaintiff's Preliminary Injunction, and inserted within, a Notice of Non-Opposition Motion for Preliminary Injunction. [Docket No. 18]. Importantly, Plaintiff has not filed a motion for preliminary injunction with this Court. Accordingly, there exists no motion for Wells Fargo to oppose. Thus, Plaintiff's Proposed Order and notice of non-opposition is completely unfounded and must be removed from the Court's docket

## II.

LEGAL ARGUMENT

The removal statute is very clear in specifying the documents that are required to be accompanied with the notice of removal. Pursuant to 28 U.S.C. § 1446, a defendant removing a case to a federal district court must file with the notice of removal “a copy of all process, pleadings, and orders served upon such defendant, or defendants in such action.” 28 U.S.C. § 1446(a). Rule 7(a) of the Federal Rules of Civil Procedure defines pleadings as a complaint, answer, answer to a counterclaim, third-party complaint, third-party answer, and a reply to an answer. Importantly, “[n]o other paper will be considered a pleading except those specifically named in Rule 7(a).” 2 JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶ 7.02(1)(b) (citing *Burns v. Lawther*, 53 F.3d 1257, 1241 (11th Cir. 1995) (Fed. R. Civ. P. 7(a) contains a “clear and precise” definition of pleadings)).

Here, Plaintiff correctly cites Local Rule 7-2 (b), which requires a response to be filed within fifteen days after service of a motion. Additionally, Wells Fargo agrees with Plaintiff that Local Rule 7-2(d) states that failure to file points and authorities responding to a motion shall constitute consent to the granting of the motion. However, Plaintiff’s assertion, that a response is required to a motion pursuant to Local Rule 7-2 (b) when that motion is not properly before this Court, is completely unsupported.

Plaintiff asserts that “Defendant’s were required to file a Response and/or Opposition, no later than November 5, 2010.”<sup>1</sup> See Proposed Order 2. Wells Fargo received a fax with the Summons and Complaint on October 4, 2010. Even though service was completely improper, Wells Fargo timely responded to Plaintiff’s Complaint. Importantly, Plaintiff’s asserted Motion for Preliminary Injunction was never served on Wells Fargo. Moreover, Plaintiff and Wells Fargo signed the Joint Status Report on November 18 and 19, indicating that, “the undersigned are unaware of any motions or pleadings in this action that were not already attached to the Notice of Removal or subsequently filed with the Court herein.” [Docket No. 14].

<sup>1</sup> Ironically, Plaintiff requested that this Court stay proceedings pending the outcome of Plaintiff’s Motion to Remand. [Docket No. 7]. It is unclear how Plaintiff can rationally request that this Court order a preliminary injunction against Defendants, while at the same time request that the Court stay proceedings pending its determination of Plaintiff’s Motion to Remand.

1 If and when Plaintiff files a motion for a preliminary injunction, Wells Fargo will timely  
 2 oppose it with points and authorities. However, at this juncture, the Court does not have a pending  
 3 motion for a preliminary injunction to rule upon, and Wells Fargo has nothing further on the  
 4 Court's docket to oppose. Accordingly, because there is not a motion pending before this Court  
 5 that Wells Fargo has not timely responded to, Plaintiff's Proposed Order and Notice of Non-  
 6 Opposition must be stricken.

### 7 III.

### 8 CONCLUSION

9 Based upon the foregoing, Wells Fargo respectfully requests that this Court strike  
 10 Plaintiff's Proposed Order and Notice of Non-Opposition filed as Docket Number eighteen (18).

11 Dated: November 24, 2010.

12 SNELL & WILMER L.L.P.

13  
 14 By: /s/ Justin R. Cochran  
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**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **DEFENDANT WELLS FARGO BANK, N.A.'S MOTION TO STRIKE PLAINTIFF'S PROPOSED ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION** and **PLAINTIFF'S NOTICE OF NON-OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION PURSUANT TO LOCAL RULE 7-2(b), (d)** by method indicated below:

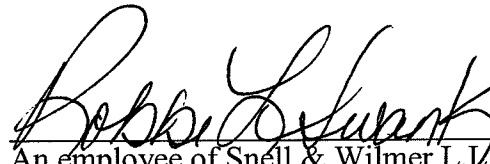
☒ U.S. Mail  
☐ U.S. Certified Mail  
☐ Facsimile Transmission  
☐ Federal Express  
☐ Electronic Service via CM/ECF

and addressed to the following:

Rick Roberts Thomas  
6775 Whispering Sands Dr.  
Las Vegas, NV 89131

*Plaintiff in Pro Per*

DATED this 23 day of November, 2010

  
An employee of Snell & Wilmer L.L.P.

Snell & Wilmer

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